



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2003-000872-001 DT

04/02/2004

that Appellant Wright's puppy had damaged her property. On November 24, 2002, the parties had a heated argument resulting in a call to the police by the Appellant. Appellant testified that she felt threatened by Appellee. In fact, Appellant felt so threatened by the confrontation and argument that on November 25, 2003, Appellant obtained an Injunction Prohibiting Harassment against Appellee from the Tolleson Justice Court. In her petition, the Appellant alleged that she and her dog were forced to leave her home out of fear for their safety because of the hostile and threatening gestures and statements made by Appellee. The Order of Protection was granted and prohibited Appellee from being on Appellant's property. Shortly thereafter in January 2003, Appellee May filed a breach of contract claim in the East Phoenix #2 Justice Court claiming that Appellant/Defendant Wright had violated the parties' verbal lease agreement by not giving May 30 days to vacate the property. May contended that Appellant Wright violated the parties' verbal lease agreement in obtaining the Injunction Against Harassment and having her forcibly removed from the property. Appellant Wright filed a counterclaim for unpaid rent. This case came to trial before the Honorable Michael Orcutt, East Phoenix #2 Justice of the Peace. Following the trial, Judge Orcutt issued a written decision dated July 10, 2003 awarding judgment to Appellee/Plaintiff May and against the Appellant. The trial court also dismissed Appellant's counterclaim. Appellant has filed a timely Notice of Appeal in this case.

**3. Issue Presented for Review.**

The issue presented for review to this court is whether the trial judge erred as a matter of law in his conclusion that Appellant Wright breached the parties' verbal lease agreement by obtaining an Injunction Against Harassment that effectively removed Appellee May from the premises and terminated the lease agreement. This issue involves exclusively a question of law as the trial judge found that Appellant's actions in obtaining the Injunction Against Harassment were improper and in violation of the parties verbal lease agreement. This Court rejects that construction as being unduly restrictive of an individual's right to obtain an Injunction Against Harassment pursuant to A.R.S. Section 12-1809.

**4. Discussion and Analysis of the Legal Issue.**

The trial court correctly and properly determined that the parties had an effective verbal lease agreement because of the part performance by each party. However, the existence of a valid lease agreement does not limit or preclude either party from obtaining an Injunction Against Harassment pursuant to A.R.S. Section 12-1809 or a Domestic Violence Order of Protection pursuant to A.R.S. Section 13-3601. The availability of these emergency injunctive protective orders is not limited or precluded by the existence of a separate contract, such as a lease agreement. That is to say, any contract which attempts to limit or preclude a party's right to obtain a protective order must be considered null and void, as against public policy.

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Therefore, as a preliminary matter, this Court must conclude that the trial judge erred in finding that Appellant “improperly exclud(ed) Plaintiff from the home.”<sup>1</sup>

Since the trial judge’s rulings in favor of Appellee May on the complaint and on Appellant’s counterclaim appear to flow from this mistake of law, this case should be remanded for a new trial. However, the trial judge is directed that any claim made by Appellee/Plaintiff May resulting from her claim of unlawful ouster shall be precluded as a matter of law, as legally Appellant was entitled to obtain an Injunction Against Harassment.<sup>2</sup> Furthermore, it appears that Appellee’s original claim may be reduced to issues of property damage. However, the counterclaim made by Appellant for unpaid rent must still be resolved.

IT IS THEREFORE ORDERED reversing the judgment and order of the trial court granting judgment to Appellee Beverly Roxanne May on May’s claim, and reversing the judgment of the trial court on Appellant Wright’s counterclaim in this case.

IT IS FURTHER ORDERED remanding this matter back to the East Phoenix #2 Justice Court for a new trial consistent with the directions in this opinion.

IT IS FURTHER ORDERED directing counsel for Appellant to lodge a judgment and order consistent with this opinion no later than April 23, 2004. Counsel for Appellant may also submit its application for attorney’s fees and costs incurred on appeal and make provision for the same within the judgment and order.

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<sup>1</sup> Order of the Honorable Michael W. Orcutt, dated July 10, 2003.

<sup>2</sup> This Court is aware that the Injunction Against Harassment was later vacated after a hearing in the Tolleson Justice Court. That later ruling does not affect the effectiveness of the Injunction Against Harassment and the date of its issuance until it was revoked. Nor does the fact that the Injunction Against Harassment was later revoked, reflect upon the appropriateness of the Injunction Against Harassment being issued in the first instance. A judicial officer found sufficient grounds in the petition to issue that order *ex parte*.